

HOUSE BILL 1041

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 68  
and Title 69, relative to certain environmental  
boards.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-211-111, is amended by deleting the section in its entirety and by substituting instead the following:

68-211-111.

(a)

(1) There is created a solid waste disposal control board which shall be composed of nine (9) members. The existing board in place on the effective date of this act is dissolved on January 15, 2012 and a new board shall be appointed in accordance with this section.

(2) All members of the board, except for the commissioner of health, shall be public members who shall serve the public's interest in achieving the goals of the federal and state laws which govern the operations of the board and of the department. It is the intent of the general assembly that membership of the board reflect the diversity of the population of the state and that composition of each board reflect the contributions of knowledge and skills from adult women and men of all racial and ethnic backgrounds. In making appointments, the appointing authorities shall consider and endeavor to assure participation from each grand division of the state and that members be from both urban and rural areas.

(3) The board shall elect a chair and a vice chair, to preside in the absence of the chair, for a twelve-month term.

(4) Each member of a board shall have a sufficient combination of education, training, experience, and professional or academic qualifications as necessary to participate effectively in the board's activities and to serve the public interest without conflict of interest in fulfilling the duties of the board as stated in the applicable federal and state statutes and regulations. No member of a board shall be an agent, employee, licensee or permit holder or contractor of the commissioner or the department or represent the interests of licensees or permit holders or groups or associations thereof.

(5)

(A) The opportunity to nominate persons to expiring terms of board members shall be announced not less than ninety (90) days before the end of the term by posting on the secretary of state's web site, the department's web site, and by e-mail to persons who have registered an e-mail address to receive such announcements. The opportunity to nominate persons to vacancies on a board shall be posted on the secretary of state's and the department's web site within ten (10) days following notification of the vacancy from the board or the technical secretary and by e-mail to appropriate media and to persons who have registered an e-mail address to receive such announcements. Announcements of the opportunity to nominate shall include any applicable deadline and instructions for submission of nominations.

(B) The department shall create and maintain a notification registry for the purpose of allowing individuals with an interest in

appointments to the board to contact the department and have the individual's full name and electronic mail address entered into the registry for notification purposes. Notice by mail is not required under this section. This section shall not be construed or applied to limit any other provision of law requiring notice.

(C) If the board incurs a vacancy, the technical secretary shall notify the appointing authority and the secretary of state in writing within ninety (90) days after the vacancy occurs. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If such sufficient information has been provided and the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration such board shall report to the government operations committees of the senate and the house of representatives why such vacancies have not been filled.

(D) If more than one half ( $\frac{1}{2}$ ) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that such board shall wind up its affairs pursuant to § 4-29-112. A board that is terminated pursuant to this subdivision shall be reviewed by the evaluation committees pursuant to title 4, chapter 5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing the board.

(6) The director of the division of solid and hazardous waste shall serve as the technical secretary of the board but shall have no vote at board meetings.

(7) Nominations for a seat on a board may be submitted by any citizen of Tennessee and any unincorporated association or organization incorporated in this state. Nominations shall be made on a form which shall be adopted by rulemaking by the board following consultation with the appointing authorities. Additional materials in support of a nomination may also be submitted.

(8)

(A) The governor shall appoint the commissioner of health and four (4) other members of the board. The commissioner of health may be represented by a designated alternate. The speaker of each house of the general assembly each shall appoint one (1) member. The comptroller of the treasury and the attorney general and reporter each shall appoint one (1) member. All appointees, except for the commissioner of health shall be members of the public and shall not be an agent, employee, or contractor of the appointing authority nor shall they be a licensee or permit holder of the department or represent the interests of licensee or permit holders or groups of associations thereof.

(B) Each appointive member shall be a resident and domiciliary of the state of Tennessee.

(C) One (1) person appointed by the governor shall be a registered engineer or geologist or qualified land surveyor with knowledge of management of solid wastes or hazardous materials from the faculty of an institution of higher learning.

(b) The members shall serve four-year terms and until their successors are appointed; provided, that the first appointments shall be as follows: The term of office of the commissioner of health shall be coterminous with such person's term of office as commissioner; two (2) of the governor's appointments shall initially be for a term of four (4) years and two (2) shall be for a term of three (3) years; the attorney general and reporter and the comptroller of the treasury's appointments shall each initially be for a term of two (2) years; and each speaker's appointment shall initially be for a term of one (1) year.

(c) All vacancies in appointed positions shall be filled by the original appointing authority to serve the remainder of the unexpired term. As seats become vacant, new or reappointed board members shall be nominated and selected in accordance with this section.

(d)

(1) It is the duty of the board to adopt, modify, repeal, promulgate after due notice, and enforce rules and regulations that the board deems necessary for the proper administration of this part. Prior to promulgating, adopting, modifying, or repealing rules and regulations, the board shall conduct, or cause to be conducted, public hearings in regard to such proposed actions. All such acts relative to rules and regulations shall be in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) The board is further authorized to promulgate rules and regulations to effectuate the purposes of parts 8 and 9 of this chapter. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) Notice of any hearing shall be given not less than thirty (30) days before the date of such hearing and shall state the date, time, and place of hearing, and the subject of the hearing. Any person who desires to be heard relative to solid waste matters at any such public hearing shall give written notice thereof to the board on or before the first date set for the hearing. The board is authorized to set reasonable time limits for the oral presentation of views by any person at the public hearing.

(f) It is the duty of the board to act as a board of appeals as provided in § 68-211-113.

(g) The board shall hold at least four (4) regular meetings each calendar year at a place and time to be fixed by the board. The board shall also meet at the request of the commissioner of environment and conservation or of the chair of the board, or upon request of three (3) members of the board. The majority of the board constitutes a quorum. The concurrence of at least five (5) members shall be required for a determination of matters which are to be resolved under the Uniform Administrative Procedures Act other than matters of scheduling in which case a majority of those members present and voting when a quorum is present shall be sufficient. The department of environment and conservation shall provide all necessary staff for the board.

(h) Each member of the board shall be entitled to be paid fifty dollars (\$50.00) for each day actually and necessarily employed in the discharge of official duties, and each member shall be entitled to receive the amount of the member's traveling and other necessary expenses actually incurred while engaged in the performance of any official duties when so authorized by the board. Such expenses shall be reimbursed in accordance with the comprehensive state travel regulations promulgated by the

commissioner of finance and administration and approved by the attorney general and reporter.

(i) No member of the board shall participate in making any decision concerning a permit or upon a case in which the member is employed, or in which the member has a direct substantial financial interest.

SECTION 2. Tennessee Code Annotated, Section 69-3-104, is amended by deleting the section in its entirety and by substituting instead the following:

69-3-104.

(a)

(1) There is hereby created and established the Tennessee water quality control board, referred to as the "board" in this part, which shall be composed of nine (9) members. The existing board is dissolved on September 1, 2011, and a new board shall be appointed in accordance with this section.

(2) All members of the board, except for the commissioner of health, shall be public members who shall serve the public's interest in achieving the goals of the federal and state laws which govern the operations of the board and of the department. It is the intent of the general assembly that membership of the board reflect the diversity of the population of the state and that composition of each board reflect the contributions of knowledge and skills from adult women and men of all racial and ethnic backgrounds. In making appointments, the appointing authorities shall consider and endeavor to assure participation from each grand division of the state and that members be from both urban and rural areas.

(3) The board shall elect a chair and a vice chair, to preside in the absence of the chair, for a twelve-month term.

(4) Each member of a board shall have a sufficient combination of education, training, experience, and professional or academic qualifications as necessary to participate effectively in the board's activities and to serve the public interest without conflict of interest in fulfilling the duties of the board as stated in the applicable federal and state statutes and regulations. No member of a board shall be an agent, employee, licensee, or permit holder or contractor of the commissioner or the department or represent the interests of licensee or permit holders or groups or associations thereof.

(5)

(A) The opportunity to nominate persons to expiring terms of board members shall be announced not less than ninety (90) days before the end of the term by posting on the secretary of state's web site, the department's web site, and by e-mail to persons who have registered an e-mail address to receive such announcements in accordance with subdivision (B). The opportunity to nominate persons to vacancies on a board shall be posted on the secretary of state's and the department's web site within ten (10) days following notification of the vacancy from the board and by e-mail to persons who have registered an e-mail address to receive such announcements. Announcements of the opportunity to nominate shall include any applicable deadlines and instructions for submission of nominations.

(B) The department shall create and maintain a notification registry for the purpose of allowing individuals with an interest in appointments to the board to contact the department and have the individual's full name and electronic mail address entered into the registry



for notification purposes. Notice by mail is not required under this section. This section shall not be construed or applied to limit any other provision of law requiring notice.

(C) If the board incurs a vacancy, the technical secretary shall notify the appointing authority and the secretary of state in writing within ninety (90) days after the vacancy occurs. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If such sufficient information has been provided and the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration such board shall report to the government operations committees of the senate and the house of representatives why such vacancies have not been filled.

(D) If more than one half ( $\frac{1}{2}$ ) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that such board shall wind up its affairs pursuant to § 4-29-112. A board that is terminated pursuant to this subdivision shall be reviewed by the evaluation committees pursuant to title 4, chapter 5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing the board.

(6) Each member shall be a resident and domiciliary of the state of Tennessee.

(7) All appointments of members shall be for a full four-year term.

(8) Any appointive member who is absent from three (3) consecutive, regularly scheduled meetings shall be removed from the board by the governor. If the board incurs a vacancy under this subdivision (8), the technical secretary shall notify, the appointing authority and the secretary of state in writing within ninety (90) days after the vacancy occurs. The commissioner of health may be represented by a designated alternate.

(9) All vacancies in members shall be filled by the original appointing authority to fill the unexpired term of the member. As seats become vacant, new or appointed board members shall be nominated in accordance with this section.

(10) Members shall continue to serve until a successor has been appointed.

(11) Nominations for a seat on a board may be submitted by any citizen of Tennessee and any unincorporated association or organization incorporated in this state. Nominations shall be made on a form that shall be adopted by rulemaking by the board following consultation with the appointing authority. Additional materials in support of a nomination may also be submitted.

(12) The governor shall appoint the commissioner of health and four (4) other members of the board. The commissioner of health may be represented by a designated alternate. The speaker of each house of the general assembly each shall appoint one (1) member. The comptroller of the treasury and the attorney general and reporter each shall appoint one (1) member. All appointees shall be members of the public and shall not be an agent, employee, or contractor of the appointing authority nor shall they be a licensee or permit holder

of the department or represent the interests of licensee or permit holders or groups of associations thereof.

(b) The state shall ensure that those members of the board who do not receive, or during the previous two (2) years have not received, a significant portion of their income directly or indirectly from permit holders or applicants for a permit shall hear all appeals on permit matters. If the chair is not eligible to hear any permit matter, the members of the board shall select a member by majority vote to serve as chair. Board member participation in permit matters shall also be in accordance with title 4, chapter 5, part 3, in addition to the provisions set forth in subdivisions (b)(1)-(3). For purposes of this section:

(1) "Income" includes retirement benefits, consultant fees, and stock dividends. Income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments of which the recipient does not know the identity of the primary sources of income. If members are not qualified, then the remaining members shall select, by agreement, qualified temporary replacements to serve for the duration of any proceeding before the board.

(2) "Permit holders or applicants for a permit" does not include any department or agency of the state.

(3) "Significant portion of their income" means ten percent (10%) of gross personal income for a calendar year, except that it means fifty percent (50%) of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.

(c) Each member of the board, shall be entitled to be paid fifty dollars (\$50.00) for each day actually and necessarily employed in the discharge of official duties, and each member shall be entitled to receive the amount of such member's traveling and other necessary expenses actually incurred while engaged in the performance of any official duties when so authorized by the board. Such expenses shall be paid in accordance with the comprehensive state travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(d) The board shall have two (2) regularly scheduled meetings each year, one (1) in October and one (1) in April. Special meetings may be called by the chair at any time and shall be called as soon as practicable by the chair on the written request of two (2) members. Regular meetings of the panel shall be held as necessary to review permit matters. All members shall be duly notified by the technical secretary of the time and place of any regular or special meeting at least five (5) days in advance of such meeting. The majority of the board constitutes a quorum and the concurrence of a majority of those present and voting in any matter within its duties shall be required for a determination of matters within its jurisdiction.

(e) The board shall keep complete and accurate records of the proceedings of all their meetings, a copy of which shall be kept on file in the office of the director and open to public inspection.

(f) The director of the division of water pollution control shall serve as the technical secretary of the board. In that capacity, the director shall report the proceedings of the board pursuant to § 69-3-110 and perform such other duties as the board may require, but may not vote.

(g) The members shall serve four-year terms and until their successors are appointed; provided, that the first appointments shall be as follows: The term of office of the commissioner of health shall be coterminous with such person's term of office as commissioner; two (2) of the governor's appointments shall initially be for a term of four (4) years and two (2) shall be for a term of three (3) years; the attorney general and reporter and the comptroller of the treasury's appointments shall each initially be for a term of two (2) years; and each speaker's appointment shall initially be for a term of one (1) year.

SECTION 3. Tennessee Code Annotated, Section 68-201-104, is amended by deleting the section in its entirety and by substituting instead the following:

68-201-104.

(a)

(1) There is created an agency to be known as the air pollution control board, which shall be composed of nine (9) members. The existing board is dissolved on July 1, 2012, and a new board shall be appointed in accordance with this section.

(2) All members of the board, except for the commissioner of health, shall be public members who shall serve the public's interest in achieving the goals of the federal and state laws which govern the operations of the board and of the department. It is the intent of the general assembly that membership of the board reflect the diversity of the population of the state and that composition of each board reflect the contributions of knowledge and skills from adult women and men of all racial and ethnic backgrounds. In making appointments, the appointing authorities shall consider and endeavor to assure participation from

each grand division of the state and that members be from both urban and rural areas.

(3) The board shall elect a chair and a vice chair, to preside in the absence of the chair, for a twelve-month term.

(4) Each member of a board shall have a sufficient combination of education, training, experience, and professional or academic qualifications as necessary to participate effectively in the board's activities and to serve the public interest without conflict of interest in fulfilling the duties of the board as stated in the applicable federal and state statutes and regulations. No member of a board shall be an agent, employee, licensee, or permit holder or contractor of the commissioner or the department or represent the interests of licensees or permit holders or groups or associations thereof. Each appointive member shall be a resident and domiciliary of the state of Tennessee.

(A) One (1) member shall be a registered professional engineer as defined in title 62, chapter 2, who shall have at least five (5) years' experience in the field of air pollution control;

(B) One (1) member shall be a physician, licensed in compliance with title 63, chapter 6, who shall be experienced in the health effects of air contaminants.

(5)

(A) The opportunity to nominate persons to expiring terms of board members shall be announced not less than ninety (90) days before the end of the term by posting on the secretary of state's web site, the department's web site, and by e-mail to persons who have registered an e-mail address to receive such announcements in accordance with

subdivision (B). The opportunity to nominate persons to vacancies on a board shall be posted on the secretary of state's and the department's web site within ten (10) days following notification of the vacancy from the board and by e-mail to persons who have registered an e-mail address to receive such announcements. Announcements of the opportunity to nominate shall include any applicable deadline and instructions for submission of nominations.

(B) Notice by mail is not required under this section. This section shall not be construed or applied to limit any other provision of law requiring notice.

(C) If the board incurs a vacancy, the technical secretary shall notify the appointing authority and the secretary of state in writing within ninety (90) days after the vacancy occurs. If members must be appointed with the qualification set out in subsection (a)(4) (A) or (B), the technical secretary shall so notify the appointing authority and the secretary of state. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling such vacancy. If such sufficient information has been provided and the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration such board shall report to the government operations committees of the senate and the house of representatives why such vacancies have not been filled.

(D) If more than one half ( $\frac{1}{2}$ ) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that such board shall wind up its affairs pursuant to § 4-29-112. A board that is terminated pursuant to this subdivision shall be reviewed by the evaluation committees pursuant to title 4, chapter 5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing the board.

(E) Any appointive member who is absent from three (3) consecutive, regularly scheduled meetings shall be removed from the board by the governor. If the board incurs a vacancy under this provision, the technical secretary shall notify the appointing authority and the secretary of state in writing within ninety (90) days after the vacancy occurs. The commissioner of health may be represented by a designated alternate.

(6) Nominations for a seat on a board may be submitted by any citizen of Tennessee and any unincorporated association or organization incorporated in this state. Nomination shall be made on a form which shall be adopted by rulemaking by the board following consultation with the appointing authority. Additional materials in support of a nomination may also be submitted.

(7)

(A) The governor shall appoint the commissioner of health and four (4) other members of the board. The commissioner of health may be represented by a designated alternate. The speaker of each house of the general assembly each shall appoint one (1) member. The comptroller of



the treasury and the attorney general and reporter each shall appoint one (1) member. All appointees shall be members of the public and shall not be an agent, employee, or contractor of the appointing authority nor shall they be a licensee or permit holder of the department or represent the interests of licensee or permit holders or groups of associations thereof.

(B) The members shall serve four-year terms and until their successors are appointed; provided, that the first appointments shall be as follows: The term of office of the commissioner of health shall be coterminous with such person's term of office as commissioner; two (2) of the governor's appointments shall initially be for a term of four (4) years and two (2) shall be for a term of three (3) years; the attorney general and reporter and the comptroller of the treasury's appointments shall each initially be for a term of two (2) years; and each speaker's appointment shall initially be for a term of one (1) year.

(C) All vacancies in appointed positions shall be filled by the original appointing authority to serve the remainder of the unexpired term. As seats become vacant, new or reappointed board members shall be nominated and selected in accordance with this section.

(D) The board shall hold at least two (2) regular meetings each calendar year at a place and time to be fixed by the board. The director of the air pollution control division of the department of environment and conservation shall be the technical secretary of the board. The director shall receive no additional compensation for such services and may not vote. Special meetings may be called by the chair or by three (3) members of the board upon delivery of written notice to the office of each

member of the board. The majority of the board constitutes a quorum. The concurrence of at least five (5) members shall be required for a determination of matters which are to be resolved under the Uniform Administrative Procedures Act other than matters of scheduling in which case a majority of those members present and voting when a quorum is present shall be sufficient.

(E) Each member shall be reimbursed for travel in accordance with the provisions of the comprehensive travel regulations as approved by the attorney general and reporter and the commissioner of finance and administration. A per diem allowance of fifty dollars (\$50.00) shall only be paid to members for meetings at which a quorum is present.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.